

Overall, the Proposed Guidance on Nontraditional Mortgage Products Risks, addresses concerns about a group of currently popular products: Interest only, payment option and in particular those products paired with “stated” income or second liens. In the documents sent by Mark Pearce, Deputy Commissioner of Banks, there are no exact figures on the losses or delinquencies caused directly by these products in comparison to their “conventional” ARM counterparts. Understanding true losses or delinquencies in these product categories caused (not by fraud) but by the “recasting of payments” would be helpful to the licensee in determining whether any action is warranted.

In response to questions concerning the differences of non-bank mortgage lenders and mortgage brokers the answer is very complex. Mortgage Brokers are only able to sell products underwritten and in most cases re-disclosed by lenders. This does not eliminate their responsibility to provide wise counsel to their borrowers, but ultimately the consumer will select the products/payment terms that they prefer. Most lenders require ARM disclosures that are specific to the product offered with the application package. Although they do not disclose the “worst case” scenario payment or “worst case” scenario loan balance, they do clearly state the adjustment terms to the consumers. The Federal Reserve Board Office of Thrift Supervision’s Consumer Handbook on Adjustable Rate Mortgages provides additional information as well as guidance on questions to answer in comparing products. Most ARM term disclosures require the signature of the consumer to document receipt of disclosure and the CHARM booklet. The Mortgage non bank lender may have some room based on ability to warehouse loans to disclose differently on the HUD but the actual disclosures will still be required for the loan to be sold at a later date.

The guidance appears to deal with lender’s underwriting and loan course review guidelines. Mortgage brokers should not be required to impose underwriting guidelines above the lender’s offering. If the OCOB wishes to suggest an additional state disclosure it should provide the recommended document to licensees for review.

As with advertising payments, the current practice of scrolling the “worst case” scenario quickly during the television on radio advertisement, rarely “informs” consumers. Printed advertising should clearly state the product and terms but to go through all types of eventual scenarios would seem overly cumbersome and confusing.

The typical borrower selecting the Interest Only ARM loan product in my company is very similar to the ARM borrower during the high interest rates of the early 1980’s. The borrower has a period of time where they prefer a “fixed” rate, but would prefer to control their repayment schedule. They may use a second lien to avoid PMI or a stated income program due to the complexity and volatile nature of the finances. In almost all cases the larger risk imposes a higher credit score and reserve requirement by the lender. These borrowers have normally been much more affluent and finance savvy. Although these are “non-traditional” products I feel that in the case where they carry this level of quality underwriting guidelines they seem just an extension of the traditional ARM.

In general the guidance is vague and makes assumptions of risk that have not been documented and may be factored into the rates differential, credit score requirements, and / or reserve requirements. I do not currently see any reason addressed in the proposed guidance that mortgage brokers should be included. As lenders revise their disclosures to adhere to federal banking regulators, the final guidance will be passed to the mortgage broker/banker in the form of product guidelines. The origination community will be required to comply in order to procure the products the consumer demands.

It appears from the recent headline National bank vs. local oversight (The Charlotte Observer November 30, 2006) that this Proposed Guidance on Non-traditional Mortgage Product Risks may be the only way the state feels it can exert control of lenders. There appears to be a struggle in many state’s lender oversight versus federal oversight. Since the Supreme Court will certainly rule on this topic in the near future, the state should pass no mandate of any type that would add requirements to the licensee (non bank mortgage company or mortgage broker) that may not be imposed by the federal government.

When consumers have been treated unfairly there has typically been many professionals involved and additional restrictions have not curtailed their unethical and in many cases illegal behavior. Our goal should always be to allow consumers the choices they want and to inform them fully of the possible positives and negatives of the products they consider. We cannot compete in the market if choices are available through the internet or through banks that are our industry is not allowed to sell. The products under scrutiny have multiple disclosures and any action must stress individual consumer responsibility.

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